



Infrastructure, environment, buildings

**Transmittal Letter**

To:  
Ed Moreen

Copies:

ARCADIS U.S., Inc.  
2300 Eastlake Avenue East  
Suite 200  
Seattle  
Washington 98102  
Tel 206.325.5254  
Fax 206.325.8218

From:  
Christopher Robinson

Date:  
December 7, 2011

Subject:  
Environmental Covenant

ARCADIS Project No.:  
CO001429

**We are sending you:**

- ☐ **Attached** ☐ **Under Separate Cover Via \_\_\_\_\_ the Following Items:**
- |  |                                  |   |                                       |
|--|----------------------------------|---|---------------------------------------|
| <input type="checkbox"/> Shop Drawings | <input type="checkbox"/> Plans   | <input type="checkbox"/> Specifications | <input type="checkbox"/> Change Order |
| <input type="checkbox"/> Prints        | <input type="checkbox"/> Samples | <input type="checkbox"/> Copy of Letter | <input type="checkbox"/> Reports      |
| <input type="checkbox"/> Other: _____  |                                  |   |                                       |

Copies	Date	Drawing No.	Rev.	Description	Action*
3	12/7/11			Environmental Covenant and title evidence	

**Action\***

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> A Approved           | <input type="checkbox"/> CR Correct and Resubmit | <input type="checkbox"/> Resubmit _____ Copies |
| <input type="checkbox"/> AN Approved As Noted | <input type="checkbox"/> F File                  | <input type="checkbox"/> Return _____ Copies   |
| <input type="checkbox"/> AS As Requested      | <input type="checkbox"/> FA For Approval         | <input type="checkbox"/> Review and Comment    |
| <input type="checkbox"/> Other: _____         |  |  |

**Mailing Method**

- |  |  |  |   |
|--|--|--|---|
| <input type="checkbox"/> U.S. Postal Service 1 <sup>st</sup> Class | <input type="checkbox"/> Courier/Hand Delivery       | <input checked="" type="checkbox"/> FedEx Priority Overnight | <input type="checkbox"/> FedEx 2-Day Delivery |
| <input type="checkbox"/> Certified/Registered Mail                 | <input type="checkbox"/> United Parcel Service (UPS) | <input type="checkbox"/> FedEx Standard Overnight            | <input type="checkbox"/> FedEx Economy        |
| <input type="checkbox"/> Other: _____                              |  |  |   |

**Comments:** \_\_\_\_\_ Please see the enclosed environmental covenant and title evidence for your use and information.



Infrastructure, environment, buildings

ARCADIS U.S., Inc.  
2300 Eastlake Avenue East  
Suite 200  
Seattle  
Washington 98102  
Tel 206.325.5254  
Fax 206.325.8218

**Transmittal Letter**

To:  
Jan Olson

Copies:

From:  
Christopher Robinson

Date:  
December 7, 2011

Subject:  
Environmental Covenant

ARCADIS Project No.:  
CO001429

**We are sending you:**

- ☐ **Attached** ☐ **Under Separate Cover Via \_\_\_\_\_ the Following Items:**
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| <input type="checkbox"/> Other: _____  |                                  |   |                                       |

Copies	Date	Drawing No.	Rev.	Description	Action*
2	12/7/11			Environmental Covenant and title evidence	

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| <input type="checkbox"/> Other: _____                              |  |  |   |

**Comments:** \_\_\_\_\_ Please see the enclosed environmental covenant and title evidence for your use and information.



## ***First American Title Insurance Company*** **National Commercial Services**

1125 17th Street, Suite 750, Denver, CO 80202  
(303)876-1112 - FAX (877)235-9185

**ESCROW COMPANY INFORMATION:**

Escrow Officer: **Linda Rae Paul** - Escrow Assistant: **Lauri Craft**

**ADA COUNTY TITLE UNIT**

Title Officer:

To: **Davis Graham & Stubbs LLP**  
**1550 17th Street, Suite 500**  
**Denver, CO 80202**

Order No.: **NCS-515468-CO**

Attn: **Paul Means**

Your Ref:

Re: Property Address: , **Wallace, ID 83873**

### **COMMITMENT FOR TITLE INSURANCE**

Issued by

### ***FIRST AMERICAN TITLE INSURANCE COMPANY***

Agreement to Issue Policy

We agree to issue a policy to you according to the terms of this Commitment.

When we show the policy amount and your name as the proposed insured in Schedule A, this Commitment becomes effective as of the Commitment Date shown in Schedule A.

If the Requirements shown in this Commitment have not been met within six months after the Commitment Date, our obligation under this Commitment will end. Also, our obligation under this Commitment will end when the Policy is issued and then our obligation to you will be under the Policy.

Our obligation under this Commitment is limited by the following:

The Provisions in Schedule A.

The Requirements in Schedule B-1.

The Exceptions in Schedule B-2.

The Conditions.

This Commitment is not valid without Schedule A and Section 1 and 2 of Schedule B.

**FIRST COMMITMENT  
SCHEDULE A**

1. Commitment Date: November 25, 2011 at 8:00 a.m.

2. Policy or Policies to be issued:

	AMOUNT	FEE
Owner's Policy		
Standard Owner's Policy (6/17/06) Form 1402-06	\$ TBD	\$
Proposed Insured:		
To Be Determined		

3. Fee Simple interest in the land described in this Commitment is owned, at the Commitment Date by:

Union Pacific Railroad Company

4. The land referred to in this Commitment is situated in the State of Idaho, County of Shoshone, and is described as follows:

A parcel of land being on the northeasterly side of the northeasterly right of way line of Interstate 90, Project No.I-IG-90-1(98)60 and I-90-1(47)61 Highway Surveys as shown on the plans on file in the office of the Idaho Transportation Department, and being a portion of Section 27, Township 48 North, Range 4 East B.M., Shoshone County, Idaho, being more particularly described as follows:

Commencing at the witness corner that bears N77°05'27"W a distance of 64.35 feet from the southeast corner of Section 27, Township 48 North, Range 4 East B.M.,

Thence N51°25'01"W a distance of 1321.31 feet to a point 88.98 feet perpendicularly from centerline station 2047+65.16 of said Interstate 90 Highway Surveys and being the real point of beginning;

Thence N31°36'27"W a distance of 1311.00 feet to a point;

Thence N43°24'22"W a distance of 1735.61 feet to a point;

Thence S46°35'38"W a distance of 38.65 feet to a point on the centerline of the main channel of the South Fork of the Coeur d'Alene River;

Thence N48°06'15"W along said centerline a distance of 1055.01 feet to a point;

Thence N38°35'14"W along said centerline a distance of 323.84 feet to a point;

Thence N61°05'40"W along said centerline a distance of 513.59 feet to a point;

Thence N70°42'22"W along said centerline (prior to its relocation) a distance of 467.97 feet to a its intersection with the northeasterly right of way line of the relocated Burlington Northern Inc. spur line;

Thence northwesterly along said relocated right of way line being a non-tangent 1457.39 foot radius curve to the right, a distance of 244.66 feet to a point(chord = N41°14'42"W, 244.37 feet);

Thence N36°26'09"W along said relocated right of way a distance of 359.79 feet to a point;

Thence N41°07'51"W along said relocated right of way a distance of 28.52 feet to its intersection with the centerline of the main channel of the South Fork of the Coeur d'Alene River (prior to its relocation);

Thence N19°40'34"W along said centerline (prior to its relocation) a distance of 130.91 feet to a point on the west line of Section 27, Township 48 North, Range 4 East B.M., that bears S00°08'29"E a distance of 125.00 feet from the northwest corner of said section;

Thence S00°08'29"E along said section line a distance of 312.84 feet to its intersection with the northeasterly right of way line of Interstate 90, being a line offset 43.00 feet perpendicularly from centerline Station 1988+82.44 of said Highway Surveys;

Thence southeasterly along said right of way line, being a spiral curve to the right, a distance of 50.54 feet to a point of tangency 43.00 feet perpendicularly from centerline Station 1989+32.82 of said Highway Surveys (chord = S39°47'52"E a distance of 50.54 feet);

Thence S39°44'07"E along said right of way line a distance of 155.69 feet to a point of curvature 43.00 feet perpendicularly from centerline Station 1990+88.52 of said Highway Surveys;

Thence southeasterly along said right of way line, being a 5686.53 curve to the left, a distance of 557.32 feet to a point of tangency 43.00 feet perpendicularly from centerline Station 1996+50.05 of said Highway Surveys (chord = S42°32'35"E a distance of 557.10 feet);

Thence S45°21'02"E along said right of way line a distance of 1138.02 feet to a point 43.00 feet perpendicularly from centerline Station 2007+88.08 of said Highway Surveys;

Thence S48°22'11"E along said right of way line a distance of 512.63 feet to a point 70.00 feet perpendicularly from centerline Station 2013+00 of said Highway Surveys;

Thence S45°21'02"E along said right of way line a distance of 750.00 feet to a point 70.00 feet perpendicularly from centerline Station 2020+50 of said Highway Surveys;

Thence N44°38'58"E along said right of way line a distance of 60.00 feet to a point 130.00 feet perpendicularly from centerline Station 2020+50 of said Highway Surveys;

Thence S53°01'02"E along said right of way line a distance of 787.04 feet to a point 235.00 feet perpendicularly from centerline Station 2028+30 of said Highway Surveys;

Thence S43°20'28"E along said right of way line a distance of 570.35 feet to a point 215.00 feet perpendicularly from centerline Station 2034+00 of said Highway Surveys;

Thence S40°02'14"E along said right of way line a distance of 692.05 feet to a point 150.84 feet perpendicularly from centerline Station 2040+89.67 of said Highway Surveys;

Thence S25°14'55"E along said right of way line a distance of 217.53 feet to a point 68.98 feet perpendicularly from centerline Station 2043+00 of said Highway Surveys;

Thence leaving said right of way line and continuing S50°44'17"E a distance of 31.14 feet to a point 68.98 feet perpendicularly from centerline Station 2043+31.81 of said Highway Surveys;

Thence southeasterly along a 1345.02 radius curve to the left a distance of 275.32 feet to a point 68.98 feet perpendicularly from centerline Station 2046+21.25 of said Highway Surveys (chord = S57°08'21"E, 274.84 feet);

Thence S65°20'40"E a distance of 137.90 feet to a point 68.98 feet perpendicularly from centerline Station 2047+65.16 of said Highway Surveys;

Thence N22°53'15"E a distance of 19.99 feet to the real point of beginning .

Excluding that portion of the right of way of the rail-banked Wallace and Mullan Branches of the Union Pacific Railroad Company (excluding "Carved Out Areas") as described in that certain quitclaim deed from Union Pacific Railroad Company to Idaho Department of Parks and Recreation recorded as Shoshone County Instrument No. 447167 that is included within the above described parcel.

Also Excluding any portion of Northside Frontage Road.

Commonly known as: NKA, Wallace, ID 83873

## **SCHEDULE B-SECTION ONE**

### **REQUIREMENTS**

The following requirements must be met:

1. Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.
2. Pay us the premiums, fees and charges for the policy.
3. Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
4. You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.
5. Release(s) or Reconveyance(s) of items(s) none.
6. If any document in the completion of this transaction is to be executed by an attorney-in-fact, the Power of Attorney must be submitted for review prior to closing.
7. Idaho Code §31-3504 permits the state or counties that provide indigent medical assistance to a lien upon real property of the person provided assistance. We require the attached affidavit to be completed prior to recording to eliminate an exception to such lien.
8. With respect to Union Pacific Railroad Company a corporation, we require:
  - a. A certified copy of good standing of recent date issued by the secretary of state of the corporation's state of domicile.
  - b. A certified copy of a resolution of the board of directors authorizing the contemplated transaction and designating which corporate officers shall have the power to execute on behalf of the corporation.
  - c. Other requirements which the Company may impose following its review of the material required herein and other information which the Company may require.

## **SCHEDULE B -SECTION TWO**

### **EXCEPTIONS**

#### **PART I:**

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction.

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title including discrepancies, conflicts in boundary lines, shortage in area, or any other facts that would be disclosed by an accurate and complete land survey of the land, and that are not shown in the public records.
5. (A) Unpatented mining claims; (B) Reservations or exceptions in patents or in Acts authorizing the issuance thereof; (C) Water rights, claims or title to water; whether or not the matters excepted under (A), (B) or (C) are shown by the public records.
6. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
7. 2011 taxes are an accruing lien, not yet due and payable until the fourth Monday in November of the current year. The first one-half is not delinquent until after December 20 of the current year, the second one-half is not delinquent until after June 20 of the following year. Taxes which may be assessed and entered on the property roll for 2011 with respect to new improvements and first occupancy, which may be included on the regular property, which are an accruing lien, not yet due and payable.

General taxes as set forth below. Any amounts not paid when due will accrue penalties and interest in addition to the amount stated herein:

Year	Original Amount	Amount Paid	Parcel Number
2011	\$81.54	\$0.00	RP48N04E273750A
2011	\$629.28	\$0.00	RPB00000278450A

Homeowners Exemption is not in effect for 2011.

Circuit breaker is not in effect for 2011.

Agricultural Exemption is not in effect for 2011.

8. Levies and assessments of the City of Wallace.
9. Levies and assessments of East Shoshone Water District.



10. Levies and assessments of South Fork Coeur d'Alene River Sewer District.
11. Provisions in deed to Charles A. Duncan, recorded October 30, 1930, in Book 63 of Deeds, page 441.
12. Provisions in deed to Union Pacific Railroad Company, recorded October 16, 1978, as Instrument No. 275830 and in deeds recorded October 16, 1985, as Instrument Nos. 319476, 319477 and 319478.
13. Easement granted to Burlington Northern Inc., a Delaware Corporation, recorded April 10, 1979, as Instrument No. 278324.
14. Easement granted to Elizabeth Ann Kahler, John J. Uhl, David Walter Uhl, Kathleen Esther McPherson and Nancy Viola Smith, recorded July 27, 1991, as Instrument No. 347958.
15. Easement as disclosed by Easement, Right of Way, and Permit Assignment and Assumption Agreement granted to Citizens Utilities Company, a Delaware Corporation, recorded December 23, 1992, as Instrument No. 355409.
16. Lease Agreement between Spunstrand, Inc. and Union Pacific Railroad Company as disclosed by UCC Financing Statement recorded May 10, 2004 as Instrument No. 416163.
17. Provisions in deed to State of Idaho, Department of Parks and Recreation, recorded September 5, 2008, as Instrument No. 447167.
18. Unrecorded leaseholds; rights of parties in possession, rights of secured parties, vendors and vendees under conditional sales contracts of personal property installed on the premises herein, and rights of tenants to remove trade fixtures.
19. Notice of Consent Decree by Union Pacific Railroad Company, a Delaware corporation, recorded November 1, 2011, Instrument No. 464740.
20. Environmental Covenant, Condition and Restriction between Union Pacific Railroad Company and Idaho Department of Environmental Quality dated November 2, 2011 and recorded November 8, 2011, Instrument No. 464883, but omitting any covenant, condition or restriction based on race, color, religion, sex, handicap, familial status, or national origin to the extent that such covenants, conditions or restrictions violate 42 USC 3604(c).
21. Railroad right-of-way acquired pursuant to the General Right of Way Act of March 3, 1875 (18 Stat. 482, 43 U.S.C. 934).
22. Except all minerals in or under said land including but not limited to metals, oil, gas, coal, stone, and mineral rights, mining rights, and easement rights or other matters relating thereto whether expressed or implied.

NOTE: The foregoing numbered exceptions (1-6) may be eliminated in an ALTA Extended or EAGLE Coverage Policy.

<b>INFORMATIONAL NOTES</b>
----------------------------

- A. Other than as shown in Schedule B; we find no Judgment Liens, State Tax Liens, Federal Tax Liens or Child Support Liens of record which attach to the name(s) or interest of the vested owner and/or proposed insured owner/borrower.
- B. Pursuant to the State of Idaho Insurance Regulations: A cancellation fee will be charged on all cancelled orders, unless notified to the contrary, all orders shall be cancelled and a billing sent within 6 months of the effective date on the commitment.

## **CONDITIONS**

### **1. DEFINITIONS**

(a)"Mortgage" means mortgage, deed of trust or other security instrument.

(b)"Public Records" means title records that give constructive notice of matters affecting the title according to the state law where the land is located.

### **2. LATER DEFECTS**

The Exceptions in Schedule B - Section Two may be amended to show any defects, liens or encumbrances that appear for the first time in the public records or are created or attached between the Commitment Date and the date on which all of the Requirements (a) and (c) of Schedule B - Section One are met. We shall have no liability to you because of this amendment.

### **3. EXISTING DEFECTS**

If any defects, liens or encumbrances existing at Commitment Date are not shown in Schedule B, we may amend Schedule B to show them. If we do amend Schedule B to show these defects, liens or encumbrances, we shall be liable to you according to Paragraph 4 below unless you knew of this information and did not tell us about it in writing.

### **4. LIMITATION OF OUR LIABILITY**

Our only obligation is to issue to you the Policy referred to in this Commitment, when you have met its Requirements. If we have any liability to you for any loss you incur because of an error in this Commitment, our liability will be limited to your actual loss caused by your relying on this Commitment when you acted in good faith to:

comply with the Requirements shown in Schedule B - Section One

or

eliminate with our written consent any Exceptions shown in Schedule B - Section Two.

We shall not be liable for more than the Policy Amount shown in Schedule A of this Commitment and our liability is subject to the terms of the Policy form to be issued to you.

### **5. CLAIMS MUST BE BASED ON THIS COMMITMENT**

Any claim, whether or not based on negligence, which you may have against us concerning the title to the land must be based on this commitment and is subject to its terms.

**EXHIBIT A**  
**LIST OF PRINTED EXCEPTIONS AND EXCLUSIONS (By Policy Type)**  
**1. CALIFORNIA LAND TITLE ASSOCIATION STANDARD COVERAGE POLICY – 1990**

**SCHEDULE B**  
**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notice of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.

**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
3. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
4. Defects, liens, encumbrances, adverse claims or other matters:  
(a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;  
(b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;  
(c) resulting in no loss or damage to the insured claimant;  
(d) attaching or created subsequent to Date of Policy; or  
(e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
5. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable "doing business" laws of the state in which the land is situated.
6. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
7. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by their policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

**2. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY FORM B - 1970 SCHEDULE OF EXCLUSIONS FROM COVERAGE**

1. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a reduction in the dimensions or area of the land, or the effect of any violation of any such law, ordinance or governmental regulation.
2. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records at Date of Policy.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant; (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder; (c) resulting in no loss or damage to the insured claimant; (d) attaching or created subsequent to Date of Policy; or (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.

**3. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY FORM B - 1970 WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 2 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage by reason of the matters shown in parts one and two following:

**Part One**

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

**4. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1970 WITH A.L.T.A. ENDORSEMENT FORM 1 COVERAGE**  
**SCHEDULE OF EXCLUSIONS FROM COVERAGE**

1. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a reduction in the dimensions or area of the land, or the effect of any violation of any such law ordinance or governmental regulation.
2. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records at Date of Policy.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant, (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy or acquired the insured mortgage and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder, (c) resulting in no loss or damage to the insured claimant; (d) attaching or created subsequent to Date of Policy (except to the extent insurance is afforded herein as to any statutory lien for labor or material or to the extent insurance is afforded herein as to assessments for street improvements under construction or completed at Date of Policy).
4. Unenforceability of the lien of the insured mortgage because of failure of the insured at Date of Policy or of any subsequent owner of the indebtedness to comply with applicable "doing business" laws of the state in which the land is situated.

**5. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY – 1970 WITH REGIONAL EXCEPTIONS**

When the American Land Title Association Lenders Policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy, the exclusions set forth in paragraph 4 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage by reason of the matters shown in parts one and two following:

Part One:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

**6. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY – 1992 WITH A.L.T.A. ENDORSEMENT FORM 1 COVERAGE EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy;
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
  - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material or the extent insurance is afforded herein as to assessments for street improvements under construction or completed at date of policy); or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable "doing business" laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
  - (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

**7. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY – 1992 WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 6 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

**8. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 1992 EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
  - (a) created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.

4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
- (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

**9. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY – 1992 WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 8 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:  
Part One:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

**10. AMERICAN LAND TITLE ASSOCIATION RESIDENTIAL TITLE INSURANCE POLICY - 1987 EXCLUSIONS**

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:

- land use
- improvements on the land
- land division
- environmental protection

This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date.

This exclusion does not limit the zoning coverage described in items 12 and 13 of Covered Title Risks.

2. The right to take the land by condemning it, unless:

- a notice of exercising the right appears in the public records on the Policy Date
- the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking.

3. Title Risks:

- that are created, allowed, or agreed to by you
- that are known to you, but not to us, on the Policy Date - unless they appeared in the public records
- that result in no loss to you
- that first affect your title after the Policy Date - this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks

4. Failure to pay value for your title.

5. Lack of a right:

- to any land outside the area specifically described and referred to in Item 3 of Schedule A, or
- in streets, alleys, or waterways that touch your land

This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

**11. EAGLE PROTECTION OWNER'S POLICY**

**CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE - 1998**

**ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE - 1998**

Covered Risks 14. (Subdivision Law Violation). 15. (Building Permit) 16. (Zoning) and 18. (Encroachment of boundary walls or fences) are subject to Deductible Amounts and Maximum Dollar Limits of Liability

**EXCLUSIONS**

In addition to Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes ordinances, laws and regulations concerning:

- a. building
- b. zoning
- c. land use
- d. improvements on the land
- e. land division
- f. environmental protection

This exclusion does not apply to violations or the enforcement of these matters if notice of the violation or enforcement appears in the Public Records at the Policy Date.

This exclusion does not limit the coverage described in Covered Risk 14, 15, 16, 17 or 24.

2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at the Policy Date.

The right to take the Land by condemning it, unless:

- a. a notice of exercising the right appears in the Public Records at the Policy Date; or
- b. the taking happened before the Policy Date and is binding on You if You bought the Land without Knowing of the taking.

3. Risks:

- a. that are created, allowed, or agreed to by You, whether or not they appear in the Public Records;
- b. that are Known to You at the Policy Date, but not to Us, unless they appear in the Public Records at the Policy Date;
- c. that result in no loss to You; or
- d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.d, 22, 23, 24 or 25.

4. Failure to pay value for Your Title.

5. Lack of a right:

- a. to any Land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
- b. in streets, alleys, or waterways that touch the Land.

This exclusion does not limit the coverage described in Covered Risk 11 or 18.

**12. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1992  
WITH A.L.T.A. ENDORSEMENT FORM 1 COVERAGE**

**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the Land; (iii) a separation in ownership or a change in the dimensions or area of the Land or any parcel of which the Land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under insuring provisions 14, 15, 16 and 24 of this policy.  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under insuring provisions 14, 15, 16 and 24 of this policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the Public Records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without Knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) created, suffered, assumed or agreed to by the Insured Claimant;
  - (b) not known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (this paragraph (d) does not limit the coverage provided under insuring provisions 7, 8, 16, 17, 19, 20, 21, 23, 24 and 25); or
  - (e) resulting in loss or damage which would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of the Insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the Land is situated.
5. Invalidity or unenforceability of the lien of the Insured Mortgage, or claim thereof, which arises out of the transaction evidenced by the Insured Mortgage and is based upon:
  - (a) usury, except as provided under insuring provision 10 of this policy; or
  - (b) any consumer credit protection or truth in lending law.
6. Taxes or assessments of any taxing or assessment authority which become a lien on the Land subsequent to Date of Policy.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (a) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
  - (b) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
  - (c) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (i) to timely record the instrument of transfer; or
    - (ii) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.
8. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This exclusion does not limit the coverage provided under insuring provision 7.
9. Lack of priority of the lien of the Insured Mortgage as to each and every advance made after Date of Policy, and all interest charged thereon, over liens, encumbrances and other matters affecting title, the existence of which are Known to the Insured at:
  - (a) The time of the advance; or
  - (b) The time a modification is made to the terms of the Insured Mortgage which changes the rate of interest charged, if the rate of interest is greater as a result of the modification than **it would have** been before the modification.

This exclusion does not limit the coverage provided under insuring provision 7.

**SCHEDULE B**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Environmental protection liens provided for by the following existing statutes, which liens will have priority over the lien of the Insured Mortgage when they arise: NONE

**13. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY – 1992 WITH EAGLE PROTECTION ADDED  
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association loan policy with EAGLE Protection Added is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 12 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

Part One:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

Part Two:

1. Environmental protection liens provided for by the following existing statutes, which liens will have priority over the lien of the Insured Mortgage when they arise: NONE



## ***First American Title Insurance Company*** **National Commercial Services**

1125 17th Street, Suite 750, Denver, CO 80202  
(303)876-1112 - FAX (877)235-9185

### **PRIVACY POLICY**

#### **We Are Committed to Safeguarding Customer Information**

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information – particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our parent company, The First American Corporation, we have adopted this Privacy Policy to govern the use and handling of your personal information.

#### **Applicability**

This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its *Fair Information Values*, a copy of which can be found on our website at [www.firstam.com](http://www.firstam.com).

#### **Types of Information**

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

#### **Use of Information**

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

#### **Former Customers**

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

#### **Confidentiality and Security**

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's *Fair Information Values*. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.



Recording Requested By and  
When Recorded Return to:

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SPACE ABOVE THIS LINE FOR RECORDERS USE ONLY

**THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT IMPOSING  
ACTIVITY AND USE LIMITATIONS PURSUANT TO THE UNIFORM ENVIRONMENTAL  
COVENANTS ACT, IDAHO CODE § 55-3001, et seq.**

**ENVIRONMENTAL COVENANT**

This instrument is an Environmental Covenant ("Environmental Covenant") executed by Union Pacific Railroad Company ("UPRR"), the United States Environmental Protection Agency ("EPA"), and the Idaho Department of Environmental Quality ("Department") pursuant to the Uniform Environmental Covenants Act, Idaho Code §§ 55-3001 through 3015. This Environmental Covenant sets forth protective provisions, covenants, restrictions and conditions (collectively referred to as "Activity and Use Limitations") on the Property described below. The Activity and Use Limitations are designed to protect natural resources, human health and the environment. UPRR is a "holder" as defined in Idaho Code § 55-3002(6). UPRR, as the current property owner, grants this Environmental Covenant to Holder and the Department.

**Property.** This Environmental Covenant concerns real property known as the Wallace Yard and the Hercules Mill Site, located in Section 27, Township 48 North, Range 4 East, Boise Meridian, County of Shoshone, State of Idaho, currently bearing an Assessor's Parcel Number of B-0000-027-8450, and as more particularly depicted on Schedule A attached hereto (hereafter referred to as "the Property").

**Property Ownership.** UPRR hereby represents and warrants to the other signatories to this Environmental Covenant that it is the sole owner of the Property as of the date this Environmental Covenant is executed, holds fee simple title to the Property, and has the power and authority to enter into this Environmental Covenant.

**Reason for Activity and Use Limitations.** Historic mine wastes have been identified on the Property. On November 18, 2009 and September 11, 2009, respectively, UPRR and BNSF Railway Company signed a Consent Decree with the United States and the State of Idaho in *United States of America and State of Idaho v. Union Pacific Railroad Company and BNSF Railway Company*, Civil Action No. 2:09-cv-00392-EJL, United States District Court, State of Idaho (the "Consent Decree"), providing for remediation of the Property. The Consent Decree was entered by the Court on April 19, 2010. This Environmental Covenant is required because

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the remedy will leave residual concentrations of lead, arsenic, cadmium and zinc in soil and residual concentrations of lead, cadmium and zinc in groundwater underlying the Property. These concentrations may be at or above risk-based screening levels as determined by the EPA and the Department and for which future use of the Property shall be limited to protect human health and the environment.

Name and Location of Administrative Record. A copy of the administrative record for the Wallace Yard and Spur Lines Site (which includes the Property) can be found at the Wallace Public Library, 415 River Street, Wallace, Idaho 83873 or EPA Field Office, 1910 Northwest Boulevard, Suite 208, Coeur d'Alene, Idaho 83814.

Activity and Use Limitations. By acceptance and recordation of this Environmental Covenant, UPRR, and any successors in interest, are hereby restricted from using the Property, or any portion thereof, now or at any time in the future, as specifically set forth below:

1. A right of access is granted to the EPA, the Department, and their respective representatives for purposes of conducting any activity related to the Consent Decree, including, but not limited to, those activities listed in Paragraph 27.a of the Consent Decree.
2. Groundwater under the Property may not be used for drinking water or other purposes involving direct human contact.
3. The Property is subject to the Basin Institutional Controls Program, codified at IDAPA 41.01.01 and administered by the Panhandle Health Department, including, but not limited to, its requirements for and restrictions or limitations on construction, landscaping, digging or other actions to ensure and protect the integrity of any soil, gravel or vegetated barriers placed on the Property as part of the response action under the Consent Decree.
4. The Property, and any portion thereof, may be used for commercial and industrial uses. The Property shall not be used for residential uses or as a location of a children's school or daycare center.

Each owner of the Property, or any portion thereof, shall be solely responsible for demonstrating that his/her/its use at the time of his/her/its ownership is in conformity with the Activity and Use Limitations. The Activity and Use Limitations are imposed due to conditions resulting from identification of historic mine wastes on the Property.

Amendment by Consent. The Environmental Covenant may be amended by consent pursuant to Idaho Code § 55-3010. Except for an assignment undertaken pursuant to a governmental reorganization, assignment of the Environmental Covenant to a new holder is an amendment.

Termination by Consent. The Activity and Use Limitations shall apply to the Property, or any subdivided portion thereof, unless UPRR, or its successors in interest, applies to the EPA and the Department to have this Environmental Covenant terminated pursuant to Idaho Code § 55-3010 and demonstrates that:

1. the Property or any subdivided portion thereof is shown in an EPA- or Department-approved document not to contain contaminated soils or groundwater; or

2. contaminated soils and groundwater are at levels the EPA and the Department deem in writing to be adequate for the Property to be developed for unrestricted use.

Provisions to Run With the Land. Each and all of the Activity and Use Limitations shall run with the land, and pass with each and every portion of the Property, and shall apply to and bind the respective successors in interest thereof. Each and all of the Activity and Use Limitations are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property.

Concurrence of Subsequent Owners Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, and their successors, that the Activity and Use Limitations as herein established must be adhered to and that their interest in the Property shall be subject to the Activity and Use Limitations contained herein.

Recording/Filing of Environmental Covenant. This Environmental Covenant and any amendment or termination of the Environmental Covenant shall be recorded in the county recorder's office of every county in which any portion of the Property subject to the Environmental Covenant is located. The Environmental Covenant or any amendment or termination shall be recorded by UPRR, or the owner at the time of any amendment or termination, within fifteen (15) days of receipt of this Environmental Covenant signed by all parties. Within thirty (30) days of the recording of this Environmental Covenant, or any amendment or termination, the owner at that time shall provide to the EPA and the Department a copy of this recorded Environmental Covenant, or any amendment or termination of this Environmental Covenant. Upon receipt of the copy of the recorded Environmental Covenant, and any amendment or termination therein, the Department shall post the copy of the fully executed instrument in the Registry as required by Idaho Code Section 55-3012(1). In addition, a copy of the recorded Environmental Covenant, or any amendment or termination, shall be provided by the owner at that time to the following persons: (a) each person that signed the Environmental Covenant; (b) each person holding a recorded interest in the Property; (c) each person in possession of the Property; (d) each municipality or other local government in which the Property is located; and (e) any other person the Department requires. The validity of the Environmental Covenant is not affected by failure to provide a copy of the Environmental Covenant as required under this section. The Activity and Use Limitations set forth herein shall be incorporated by reference in each and all deeds and leases of any portion of the Property.

Enforcement. The EPA, the Department, and any party to the Environmental Covenant shall have authority to enforce the Activity and Use Limitations against the owner(s) at the time of a violation of this Environmental Covenant and any other person(s) then using the Property. Failure to comply with any of the Activity and Use Limitations set forth herein shall be grounds for the EPA, the Department, or their successors, to require that the owner(s) at the time of the violation correct or remove any violations of this Environmental Covenant. Violation of this Environmental Covenant shall be grounds for the EPA, the Department, or their successors, to file civil actions against the owner(s) at the time of the violation as provided by law or in equity, including without limitation, the Uniform Environmental Covenants Act, Idaho Code § 55-3011.

Notice of Conveyance of Property. Within thirty (30) days of the closing of any conveyance of the Property, or part thereof, the conveyor of the Property, shall provide written notice to the EPA and the Department and each municipality or other local government in which the Property

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is located, the name and address of all the then owners and/or occupants of the Property, or part thereof, conveyed. The EPA and the Department shall not, by reason of this Environmental Covenant, have authority to approve, disapprove, or otherwise affect any conveyance of the Property except as otherwise provided by law.

Notices. All notices required or permitted to be given hereunder shall be in writing and mailed in the United States Mail, postage prepaid, by certified or registered mail, return receipt requested, to the appropriate address indicated below or at such other place or places as UPRR or its successors, the EPA or its successors, or the Department or its successors, may, from time to time, respectively, designate in a written notice given to the others. Notices which are deposited in the United States Mail in accordance with the terms of this provision shall be deemed received three (3) days after the date of mailing thereof.

UPRR: Union Pacific - Real Estate  
ATTN: Mark Jensen  
1400 Douglas Street, Stop 1690  
Omaha, NE 68179-1690

EPA: United States Environmental Protection Agency  
ATTN: Clifford J. Villa  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101

THE DEPARTMENT: Idaho Department of Environmental Quality  
ATTN: Joe Nagel  
1410 N. Hilton  
Boise, ID 83706

Costs and Expenses. All costs of terminating this Environmental Covenant, including the cost of any remediation or abatement of any environmental condition related to Activity and Use Limitations pertaining to the Property, shall be borne by the party seeking such termination.

Partial Invalidity. If any portion of the Environmental Covenant or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such invalidated portion had not been included herein.

Headings. Headings at the beginning of each section of this Environmental Covenant are solely for the convenience of the parties and are not a part of the Environmental Covenant.

Idaho Code References. All references to the Idaho Code sections include successor provisions.

Reservation of Rights. Notwithstanding any provision of this Environmental Covenant, the EPA and the Department retain all of their access and enforcement authorities under any applicable statute or rule. Nothing in this Environmental Covenant shall affect the EPA's or the Department's ability to enforce the terms of the Consent Decree or any other agreement relating to remediation of the Property entered into between the EPA and the Department, on one hand, and UPRR, on the other hand. Nothing in this Environmental Covenant shall affect

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the obligations of UPRR under the Consent Decree or any other agreement. The EPA's and the Department's acceptance hereunder is based upon the information presently known or available to the EPA and the Department with respect to the environmental condition of the Property, and the EPA and the Department reserve the right to take appropriate action under applicable authorities in the event the EPA and the Department determine new information warrants such action.

Effective Date. The effective date of this instrument shall be the date the fully executed Environmental Covenant is recorded at the county recorder's office.

**Signature and Acknowledgments**  
**Accepted:**

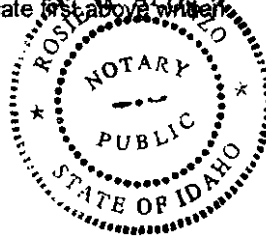
Idaho Department of Environmental Quality

Signature: [Signature]  
 Printed Name: Toni Hardesty  
 Title: Director, Idaho Department of Environmental Quality  
 Date: 11/2/14

State of Idaho               )  
County of Ada               ) ss.

On this 2 day of November, in the year 2011, before me, a Notary Public in and for said County and State, personally appeared Toni Hardesty, known or identified to me to be the Director of the Idaho Department of Environmental Quality, that executed this Environmental Covenant, and acknowledged to me that the Idaho Department of Environmental Quality executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Notary Public for Idaho: Rose M. Blonze  
Residing at: Lamp, Idaho  
Commission Expires: 11/30/2015

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Signature and Acknowledgments  
Accepted:

United States Environmental Protection Agency

Signature: [Signature]

Printed Name: Dan Opalski

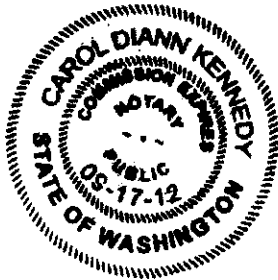
Title: Director, Office of Environmental Cleanup, U.S. Environmental Protection Agency, Region 10

Date: October 28, 2011

State of WA )  
County of King ) ss.

On this 28<sup>th</sup> day of Oct., in the year 2011, before me, a Notary Public in and for said County and State, personally appeared Dan Opalski, known or identified to me to be the Director, Office of Environmental Cleanup, U.S. Environmental Protection Agency, Region 10, that executed this Environmental Covenant, and acknowledged to me that the United States Environmental Protection Agency executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Notary Public for Carol Diann Kennedy  
Residing at: Seattle, WA  
Commission Expires: 9/17/12

**Signature and Acknowledgments**  
**Accepted:**

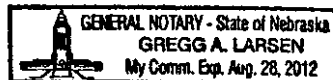
Union Pacific Railroad Company

Signature: Tony K. Love  
 Printed Name: Tony K. Love  
 Title: Assistant Vice President  
 Date: 10/25/2011

[illegible]

On this 28 day of October, in the year 2011, before me, a Notary Public in and for said County and State, personally appeared Tony K. Love, known or identified to me to be Tony K. Love, Assistant Vice President, Union Pacific Railroad Company, that executed this Environmental Covenant, and acknowledged to me that the Union Pacific Railroad Company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Notary Public for Nebraska : Cyril Adam  
Residing at: Omaha, Douglas County, Nebraska  
Commission Expires: August 28, 2012



**SCHEDULE A**

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**Legal Description  
Wallace yard**

A parcel of land being on the northeasterly side of the northeasterly right of way line of Interstate 90, Project No. I-IG-90-1(98)60 and I-90-1(47)61 Highway Surveys as shown on the plans on file in the office of the Idaho Transportation Department, and being a portion of Section 27, Township 48 North, Range 4 East B.M., Shoshone County, Idaho, being more particularly described as follows:

Commencing at the witness corner that bears N77°05'27"W a distance of 64.35 feet from the southeast corner of Section 27, Township 48 North, Range 4 East B.M.,

Thence N51°25'01"W a distance of 1321.31 feet to a point 88.98 feet perpendicularly from centerline station 2047+65.16 of said Interstate 90 Highway Surveys and being the REAL POINT OF BEGINNING;

Thence N31°36'27"W a distance of 1311.00 feet to a point;

Thence N43°24'22"W a distance of 1735.61 feet to a point;

Thence S46°35'38"W a distance of 38.65 feet to a point on the centerline of the main channel of the South Fork of the Coeur d'Alene River;

Thence N48°06'15"W along said centerline a distance of 1055.01 feet to a point;

Thence N38°35'14"W along said centerline a distance of 323.84 feet to a point;

Thence N61°05'40"W along said centerline a distance of 513.59 feet to a point;

Thence N70°42'22"W along said centerline (prior to its relocation) a distance of 467.97 feet to a its intersection with the northeasterly right of way line of the relocated Burlington Northern Inc. spur line;

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Thence northwesterly along said relocated right of way line being a non-tangent 1457.39 foot radius curve to the right, a distance of 244.66 feet to a point(chord = N41°14'42"W, 244.37 feet);

Thence N36°26'09"W along said relocated right of way a distance of 359.79 feet to a point;

Thence N41°07'51"W along said relocated right of way a distance of 28.52 feet to its intersection with the centerline of the main channel of the South Fork of the Coeur d'Alene River (prior to its relocation);

Thence N19°40'34"W along said centerline (prior to its relocation) a distance of 130.91 feet to a point on the west line of Section 27, Township 48 North, Range 4 East B.M., that bears S00°08'29"E a distance of 125.00 feet from the northwest corner of said section;

Thence S00°08'29"E along said section line a distance of 312.84 feet to its intersection with the northeasterly right of way line of Interstate 90, being a line offset 43.00 feet perpendicularly from centerline Station 1988+82.44 of said Highway Surveys;

Thence southeasterly along said right of way line, being a spiral curve to the right, a distance of 50.54 feet to a point of tangency 43.00 feet perpendicularly from centerline Station 1989+32.82 of said Highway Surveys (chord = S39°47'52"E a distance of 50.54 feet);

Thence S39°44'07"E along said right of way line a distance of 155.69 feet to a point of curvature 43.00 feet perpendicularly from centerline Station 1990+88.52 of said Highway Surveys;

Thence southeasterly along said right of way line, being a 5686.53 curve to the left, a distance of 557.32 feet to a point of tangency 43.00 feet perpendicularly from centerline Station 1996+50.05 of said Highway Surveys (chord = S42°32'35"E a distance of 557.10 feet);

Thence S45°21'02"E along said right of way line a distance of 1138.02 feet to a point 43.00 feet perpendicularly from centerline Station 2007+88.08 of said Highway Surveys;

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Thence S48°22'11"E along said right of way line a distance of 512.63 feet to a point 70.00 feet perpendicularly from centerline Station 2013+00 of said Highway Surveys;

Thence S45°21'02"E along said right of way line a distance of 750.00 feet to a point 70.00 feet perpendicularly from centerline Station 2020+50 of said Highway Surveys;

Thence N44°38'58"E along said right of way line a distance of 60.00 feet to a point 130.00 feet perpendicularly from centerline Station 2020+50 of said Highway Surveys;

Thence S53°01'02"E along said right of way line a distance of 787.04 feet to a point 235.00 feet perpendicularly from centerline Station 2028+30 of said Highway Surveys;

Thence S43°20'28"E along said right of way line a distance of 570.35 feet to a point 215.00 feet perpendicularly from centerline Station 2034+00 of said Highway Surveys;

Thence S40°02'14"E along said right of way line a distance of 692.05 feet to a point 150.84 feet perpendicularly from centerline Station 2040+89.67 of said Highway Surveys;

Thence S25°14'55"E along said right of way line a distance of 217.53 feet to a point 68.98 feet perpendicularly from centerline Station 2043+00 of said Highway Surveys;

Thence leaving said right of way line and continuing S50°44'17"E a distance of 31.14 feet to a point 68.98 feet perpendicularly from centerline Station 2043+31.81 of said Highway Surveys;

Thence southeasterly along a 1345.02 radius curve to the left a distance of 275.32 feet to a point 68.98 feet perpendicularly from centerline Station 2046+21.25 of said Highway Surveys (chord = S57°08'21"E, 274.84 feet);

Thence S65°20'40"E a distance of 137.90 feet to a point 68.98 feet perpendicularly from centerline Station 2047+65.16 of said Highway Surveys;

Thence N22°53'15"E a distance of 19.99 feet to the REAL POINT OF BEGINNING.

Said parcel containing 43.820 acres more or less and being subject to easements of view and of record.

Excluding that portion of the right of way of the rail-banked Wallace and Mullan Branches of the Union Pacific Railroad Company (excluding "Carved Out Areas") as described in that certain quitclaim deed from Union Pacific Railroad Company to Idaho Department of Parks and Recreation recorded as Shoshone County Instrument No. 447167 that is included within the above described parcel.

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**Instrument # 464883**

WALLACE, SHOSHONE COUNTY, IDAHO

11-8-2011 04:17:00 No. of Pages: 12

Recorded for: FIRST AMERICAN TITLE INSURANCE

PEGGY DELANGE-WHITE

Fee: \$1.00

Ex-Officio Recorder Deputy

Index to: ENVIRONMENTAL COVENANT

2011 NOV 8 PM 4 17

**STATE OF IDAHO**  
**County of Shoshone**

THIS IS TO CERTIFY THAT THE FOREGOING IS A  
TRUE COPY OF THE ORIGINAL NOW ON RECORD  
IN THIS OFFICE. SEALED ON THIS 9th DAY OF  
November, 20 11.

PEGGY WHITE, SHOSHONE COUNTY RECORDER  
Peggy White DEPUTY